



Minutes for this meeting will be confirmed at the Planning, Environment & Development Committee Meeting to be held in the Council Chambers, Council Administration Building, on 17 February 2005 commencing 5pm.

## **COFFS HARBOUR CITY COUNCIL**

### **ORDINARY MEETING**

**3 FEBRUARY 2005**

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**COFFS HARBOUR CITY COUNCIL**

**ORDINARY MEETING**

**3 FEBRUARY 2005**

**PLANNING, ENVIRONMENT & DEVELOPMENT COMMITTEE SUPPLEMENTARY REPORT**

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**PED3 SUPPLEMENTARY REPORT - DRAFT HEARNS LAKE/SANDY BEACH  
DEVELOPMENT CONTROL PLAN**

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**Purpose:**

To present Council with an update on the Hearns Lake Development Control Plan (DCP) and advise Council of a request from the developers of the land in the Eastern Precinct to place an "investigation area" over the proposed 7A area on their land (see Attachment one).

**Description of Item:**

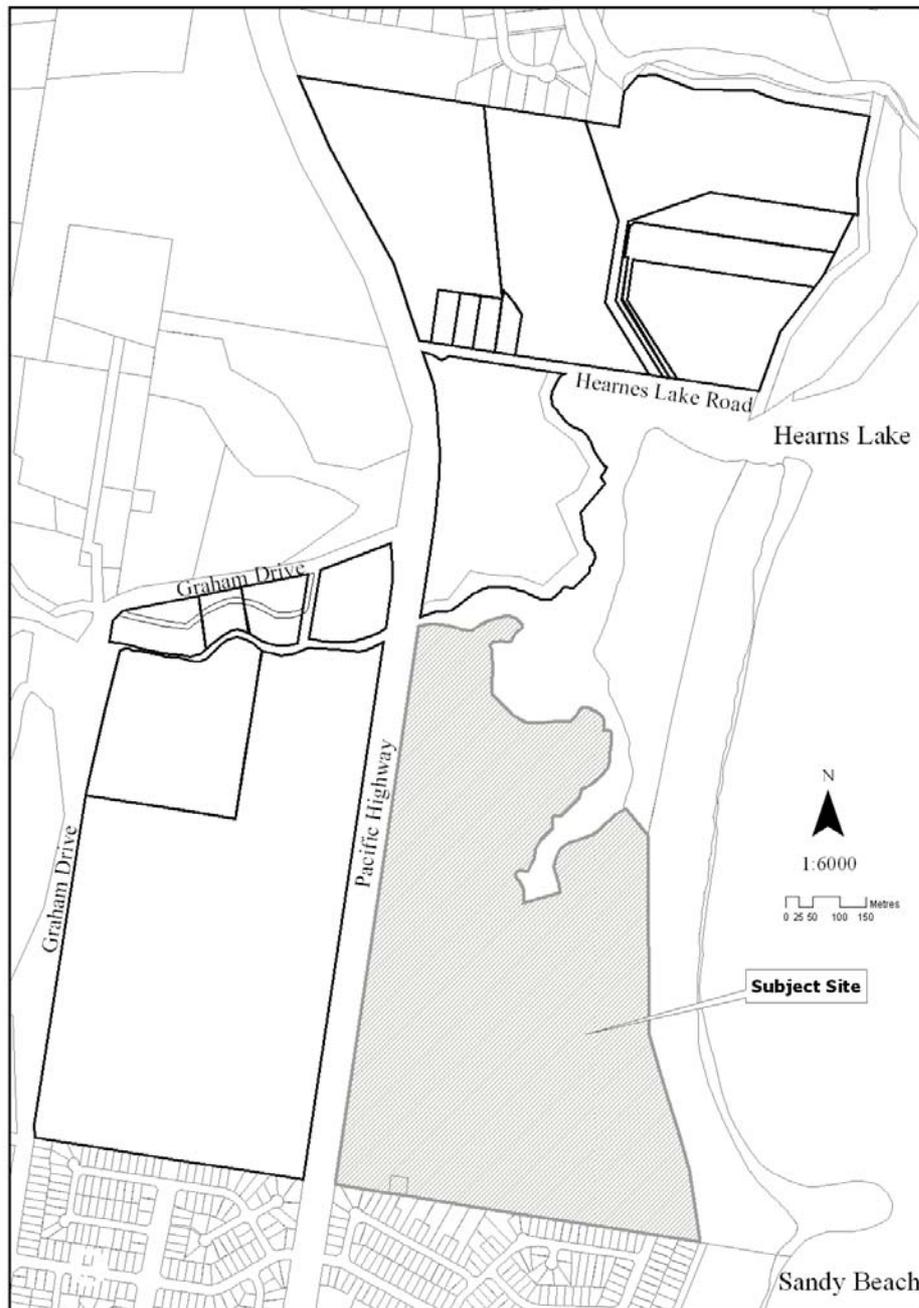
Recent Events

The developers of the land situated on the southern side of Hearns Lake and eastern side of the Highway (previously owned by Robinson) requested a meeting and met with Council representatives on Thursday 27 January 2005. The developers raised concerns regarding the accuracy of the vegetation mapping used to determine potential development areas within the DCP area. In particular they raised the validity of the mapping relating to their land and argued that the information that they have in their possession consisting of studies and site investigations carried out by their own consultants is more detailed and suggests that a substantially larger area of land is capable of development. They believe that with the exception of the buffers required by the Marine Parks Authority and National Parks that the remainder of their land can be developed for residential purposes.

The area of land in question is shown on the following locality plan. It should be noted that the area proposed to be excluded from development, ie proposed to be zoned 7A Environmental Protection, was determined by Council based on a report prepared by the developers own flora and fauna consultant. Therefore the base vegetation mapping used by Council and the developer is the same. However the conclusions reached by Council in assessing that flora and fauna report differs from that of the consultants in respect to the level of significance attributed to individual vegetation communities and therefore the level of development proposed.

**cont'd**

**PED3 - Supplementary Report - Draft Hearn's Lake/Sandy Beach Development Control Plan (cont'd)**



Council disagrees with the level of significance assigned to the vegetation communities by the developers flora and fauna consultant, however the methodology adopted by Council is supported by the DEC (NPWS) and is in line with State best management practice.

The developers have now advised that they will contest Council's assessment of the capability of their land and wish to have the development potential of the land reviewed. On this basis the developers requested that the draft DCP be amended for exhibition purposes. Their request is that their land be differentiated from all other vegetated land within the DCP, ie from all other land proposed to be zoned 7A, by cross hatching to indicate that the land is either "deferred" or "subject to further investigation".

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**PED3 - Supplementary Report - Draft Hearn's Lake/Sandy Beach Development Control Plan (cont'd)**

From Council's point of view it needs to be understood that developers, land owners and/or the community contest aspects of a draft DCP as a normal part of the exhibition process. The plan before Council is in draft form and the intention of the exhibition is to elicit comment, input, suggestions and concerns from the entire community. As Council would recall with respect to the Moonee DCP, significant changes were made to the draft DCP that was initially placed on exhibition compared to that eventually adopted. Substantial negotiations took place with both developers and the community during the exhibition period.

The developers have stated their concern that the area of their land proposed for development will be seen by the community as being "set in concrete" and they will therefore be unable to achieve any extension to this area. Hence their request that the remainder of their land be changed from the proposed designation of 7A Environmental Protection to marked for "further investigation". Whilst their concerns are acknowledged I would reiterate that the plan is in draft form and may be subject to a number of changes before it is finally adopted. In this respect, should it become clear during the exhibition period that any provision of the draft Plan requires refinement or that potential development areas are inaccurate, the draft Plan will be amended accordingly. This process will be undertaken in respect of all the land contained within the draft plan whether or not it is delineated "for further investigation".

However should Council wish to defer to the developers request, the DCP plan can be changed such that the area of the developers land previously notated as 7A becomes cross hatched and "subject to further investigation" (see Attachment A). This would ensure that the exhibition of the draft Plan is not delayed and that other developers within the DCP area are not adversely affected. Should Council consider the developers request to have merit, it needs however to be aware of the potential implications as follows:

- The area of land currently proposed for a 7A zoning equates to approximately 40% of the entire DCP area. Delineating this area of land as "deferred" or "subject to further investigation" will create a high level of uncertainty in the community in terms of making a submission to the draft Plan. It will be difficult for residents of Sandy Beach in particular to assess the impact the DCP may have upon their amenity when they are uncertain as to what level of development may occur on the adjoining land.
- Environmental groups will be concerned that all of the cross hatched area will be potentially available for residential development. It could be assumed that this uncertainty may result in a substantial adverse reaction to the exhibition of the Plan.
- Due to the lack of certainty it is also likely that the draft DCP will result in an adverse reaction from DIPNR, Marine Parks Authority and DEC (National Parks & Wildlife Service). The concerns of these authorities would be related to an inability to assess the likely impact of development on the estuary and marine park due to the fact that the draft Plan would not outline what level of development is likely to occur. Any uncertainty on the part of these authorities may also have an adverse affect on other development areas within the DCP area and may result in masterplans being held up by DIPNR until the uncertainty is resolved.
- An alternative option of delaying the exhibition of the draft DCP in its entirety until the issue of this developers land is resolved has been suggested. It is considered that this would be inequitable for other developers within the DCP area. In particular the northern portion of the DCP area, north of Hearn's Lake Road is currently the subject of two masterplans. Both masterplans have been the subject of lengthy negotiations with Council and are generally in accordance with the draft DCP. Delaying exhibition of the draft DCP is likely to delay the passage of these masterplans through DIPNR. DIPNR has previously stated that it would not sign-off on a masterplan until Council has an adopted DCP.

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## **PED3 - Supplementary Report - Draft Hearn's Lake/Sandy Beach Development Control Plan (cont'd)**

### Conclusion

Whilst the concerns of the developer are acknowledged, it is considered that the review which has been requested can and should be appropriately undertaken during the period of exhibition. The developers request for a review of Council's conclusions regarding the development potential of their land can proceed during the 28 day exhibition period and any changes to the area capable of development will be reported to Council at the time the DCP is presented for adoption. It is recommended that Council adopt the draft DCP for exhibition purposes as outlined in the original report.

### **Sustainability Assessment:**

- **Environment**

The Draft DCP has been prepared with due regard to Council's Draft Vegetation Strategy and supplementary Flora and Fauna Reports prepared by individual land owners as part of the Masterplan process. The extent of developable land has been determined from the results of these assessments and is in accordance with the methodology accepted by the Department of Environment and Conservation (formerly NPWS). The request from the owners of the eastern precinct to put the draft DCP on exhibition with an investigation area over the entirety of their land is contrary to the significant ecology identified on this land by their consultant and would not provide for sustainable outcomes.

- **Social**

The sustainable use of Hearn's Lake and its surrounding catchment is not only important to existing residents, but also to future residents of the area. The option of identifying the entire eastern precinct as "under investigation" provides no certainty for local residents regarding the protection of the lake and does not provide sufficient information for the community to make an informed decision when trying to consider the impacts of proposed development in the release area.

- **Economic**

#### **Broader Economic Implications**

Masterplan proposals have been lodged with DIPNR for two land parcels in the northern precinct. The applicants have been co-operating with Council over the past twelve months and have amended these Plans to ensure that they are in accordance with the draft DCP. DIPNR have put the Masterplans on hold until the Hearn's Lake/Sandy Beach draft DCP has been placed on public exhibition. It is therefore paramount that the draft DCP is placed on exhibition to avoid further delays in the Masterplan process for these applicants.

#### **Management Plan Implications**

Developer Contributions have been calculated based on the number of lots identified in the Draft DCP. These figures do not take into consideration the necessary infrastructure and/or facilities required to service the suggested investigation area in the Eastern Precinct.

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## **PED3 - Supplementary Report - Draft Hearn's Lake/Sandy Beach Development Control Plan (cont'd)**

### **Consultation:**

The meeting with the developers of the eastern precinct was held on Thursday 27 January 2005 at their request and the Agenda was printed on Friday 28 January 2005, therefore no consultation has been undertaken within Council or with relevant stakeholders/community.

### **Related Policy and / or Precedents:**

The preparation of LEP's and DCP's is established under the auspices of the EPA Act and Regulations. This process is a tried and true method setting out best practice. The normal process includes council preparing a draft Plan and putting it on public exhibition to gauge the acceptability of the plan with the community, developers and government authorities.

The draft prepared for Hearn's Lake/Sandy Beach has followed this process to date with input from all parties except the community. The community and relevant government agencies have the opportunity to comment and request changes as part of the exhibition process.

To vary the process at this point by amending the draft Plan may establish an unnecessary precedent which is inappropriate.

### **Statutory Requirements:**

As outlined in the original report, the draft DCP and CP have been prepared in accordance with Sections 70 and 94 of the Environmental Planning and Assessment Act 1979 and are required to be exhibited for a minimum period of 28 days (Clauses 18 and 26(4) of the Environmental Planning and Assessment Regulations).

Council must resolve to prepare the draft Local Environmental Plan (LEP) under Section 54 of the Environmental Planning and Assessment Act (EPA). The draft LEP is an amending LEP and under Section 74, Council need not prepare an environmental study unless the Director of the Department of Infrastructure, Planning and Natural Resources (DIPNR) directs a study to be prepared.

It is proposed to request DIPNR to issue a Section 65 Certificate to allow exhibition of the draft LEP.

### **Issues:**

See original report.

### **Implementation Date / Priority:**

As outlined in the original report, the draft DCP and Contributions Plan will be placed on exhibition following a resolution from Council. Public exhibition of the Draft LEP will occur following issue of a Section 65 Certificate from DIPNR, which may take some months. In the interim, Council will commence consultation with relevant statutory authorities.

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**PED3 - Supplementary Report - Draft Hearn's Lake/Sandy Beach Development Control Plan (cont'd)**

**Recommendation:**

- 1. That in accordance with Clauses 18 and 26(4) of the Environmental Planning and Assessment Regulations, Council exhibit the Draft Hearn's Lake/Sandy Beach Development Control Plan and Draft Hearn's Lake/Sandy Beach Developer Contributions Plan (as circulated with original report).**
- 2. That all landowners in the Hearn's Lake/Sandy Beach study area be advised of the exhibition.**
- 3. That no development application for the Hearn's Lake/Sandy Beach study area be determined until adoption of the Hearn's Lake/Sandy Beach Development Control Plan and Developer Contributions Plan.**
- 4. That pursuant to Section 54 of the Environmental Planning and Assessment Act, Council prepare a draft Local Environmental Plan for zone changes in the Hearn's Lake / Sandy Beach area (as circulated) and seek a Section 65 Certificate from the Department of Infrastructure Planning and Natural Resources to allow exhibition of the Plan.**
- 5. That Council request the Department of Environment and Conservation to accept land dedicated to Council through the Development Control Plan to enable extension to the Regional Park.**

G A Vereker  
Director of Planning Environment and Development

